

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 475

Introduced by Geist, 25; Slama, 1.

Read first time January 18, 2019

Committee: Judiciary

1 A BILL FOR AN ACT relating to crimes and offenses; to amend sections
2 28-367.01 and 29-4003, Reissue Revised Statutes of Nebraska, and
3 section 28-101, Revised Statutes Cumulative Supplement, 2018; to
4 create the offense of sexual extortion; to define terms; to redefine
5 sexual exploitation; to provide for a registrable offense under the
6 Sex Offender Registration Act; to provide penalties; to harmonize a
7 provision; and to repeal the original sections.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-101, Revised Statutes Cumulative Supplement,
2 2018, is amended to read:

3 28-101 Sections 28-101 to 28-1357 and 28-1601 to 28-1603 and section
4 2 of this act shall be known and may be cited as the Nebraska Criminal
5 Code.

6 Sec. 2. (1) A person commits the offense of sexual extortion if he
7 or she knowingly, intentionally, or recklessly coerces or entices another
8 person to:

9 (a) Engage in sexual conduct, sexual contact, sexual penetration, or
10 sexually deviant behavior;

11 (b) Produce, manufacture, provide, or distribute any image,
12 photograph, film, videotape, digital recording, or any other electronic
13 media of another person, whether recognizable or not, who is depicted in
14 a state of nudity or engaged in an act depicting any sexual conduct,
15 sexual contact, sexual penetration, or sexually deviant behavior;

16 (c) Provide money or any other form of consideration in order to
17 prevent the dissemination of any image, photograph, film, videotape,
18 digital recording, or any other electronic media of another person,
19 whether recognizable or not, who is depicted in a state of nudity or
20 engaged in an act depicting any sexual conduct, sexual contact, sexual
21 penetration, or sexually deviant behavior; or

22 (d) Provide money or any other form of consideration in order to
23 prevent the disclosure of any prior occurrence of sexual conduct, sexual
24 contact, sexual penetration, or sexually deviant behavior.

25 (2) Sexual extortion is a Class IC felony if the victim was under
26 nineteen years of age and the perpetrator was nineteen years of age or
27 older at the time of the offense.

28 (3) Sexual extortion is a Class II felony if the victim was nineteen
29 years of age or older at the time of the offense.

30 (4) Sexual extortion is a Class IIA felony if both the victim and
31 the perpetrator were under nineteen years of age at the time of the

1 offense.

2 (5) As part of sentencing following a conviction for a violation of
3 this section, the court shall make a finding as to the ages of the
4 defendant and the victim at the time the offense occurred. If the
5 defendant is found to have been nineteen years of age or older and the
6 victim is found to have been less than eighteen years of age at such
7 time, then the defendant shall be required to register under the Sex
8 Offender Registration Act.

9 (6) For purposes of this section:

10 (a) Nudity has the same meaning as in section 28-807;

11 (b) Sexual conduct has the same meaning as in section 28-807;

12 (c) Sexual contact has the same meaning as in section 28-318;

13 (d) Sexual penetration has the same meaning as in section 28-318;

14 and

15 (e) Sexually deviant behavior means and includes, but is not limited
16 to, any of the following acts from which sexual gratification is derived:
17 Acts with nonhuman objects, dead human bodies, animals, excrement, blood,
18 semen, or urine; any act which is designed to inflict humiliation or
19 suffering; or any act of paraphilia.

20 Sec. 3. Section 28-367.01, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 28-367.01 Sexual exploitation includes, but is not limited to, a
23 violation of section 28-311.08 or section 2 of this act and causing,
24 allowing, permitting, inflicting, or encouraging a vulnerable adult to
25 engage in voyeurism, in exhibitionism, in prostitution, or in the lewd,
26 obscene, or pornographic photographing, filming, or depiction of the
27 vulnerable adult.

28 Sec. 4. Section 29-4003, Reissue Revised Statutes of Nebraska, is
29 amended to read:

30 29-4003 (1)(a) The Sex Offender Registration Act applies to any
31 person who on or after January 1, 1997:

1 (i) Has ever pled guilty to, pled nolo contendere to, or been found
2 guilty of any of the following:

3 (A) Kidnapping of a minor pursuant to section 28-313, except when
4 the person is the parent of the minor and was not convicted of any other
5 offense in this section;

6 (B) False imprisonment of a minor pursuant to section 28-314 or
7 28-315;

8 (C) Sexual assault pursuant to section 28-319 or 28-320;

9 (D) Sexual assault of a child in the second or third degree pursuant
10 to section 28-320.01;

11 (E) Sexual assault of a child in the first degree pursuant to
12 section 28-319.01;

13 (F) Sexual abuse of a vulnerable adult or senior adult pursuant to
14 subdivision (1)(c) of section 28-386;

15 (G) Incest of a minor pursuant to section 28-703;

16 (H) Pandering of a minor pursuant to section 28-802;

17 (I) Visual depiction of sexually explicit conduct of a child
18 pursuant to section 28-1463.03 or 28-1463.05;

19 (J) Knowingly possessing any visual depiction of sexually explicit
20 conduct which has a child as one of its participants or portrayed
21 observers pursuant to section 28-813.01;

22 (K) Criminal child enticement pursuant to section 28-311;

23 (L) Child enticement by means of an electronic communication device
24 pursuant to section 28-320.02;

25 (M) Debauching a minor pursuant to section 28-805; or

26 (N) Attempt, solicitation, aiding or abetting, being an accessory,
27 or conspiracy to commit an offense listed in subdivisions (1)(a)(i)(A)
28 through (1)(a)(i)(M) of this section;

29 (ii) Has ever pled guilty to, pled nolo contendere to, or been found
30 guilty of any offense that is substantially equivalent to a registrable
31 offense under subdivision (1)(a)(i) of this section by any village, town,

1 city, state, territory, commonwealth, or other jurisdiction of the United
2 States, by the United States Government, by court-martial or other
3 military tribunal, or by a foreign jurisdiction, notwithstanding a
4 procedure comparable in effect to that described under section 29-2264 or
5 any other procedure to nullify a conviction other than by pardon;

6 (iii) Is incarcerated in a jail, a penal or correctional facility,
7 or any other public or private institution or is under probation or
8 parole as a result of pleading guilty to or being found guilty of a
9 registrable offense under subdivision (1)(a)(i) or (ii) of this section
10 prior to January 1, 1997; or

11 (iv) Enters the state and is required to register as a sex offender
12 under the laws of another village, town, city, state, territory,
13 commonwealth, or other jurisdiction of the United States.

14 (b) In addition to the registrable offenses under subdivision (1)(a)
15 of this section, the Sex Offender Registration Act applies to any person
16 who on or after January 1, 2010:

17 (i)(A) Except as provided in subdivision (1)(b)(i)(B) of this
18 section, has ever pled guilty to, pled nolo contendere to, or been found
19 guilty of any of the following:

20 (I) Murder in the first degree pursuant to section 28-303;

21 (II) Murder in the second degree pursuant to section 28-304;

22 (III) Manslaughter pursuant to section 28-305;

23 (IV) Assault in the first degree pursuant to section 28-308;

24 (V) Assault in the second degree pursuant to section 28-309;

25 (VI) Assault in the third degree pursuant to section 28-310;

26 (VII) Stalking pursuant to section 28-311.03;

27 (VIII) Violation of section 28-311.08 requiring registration under
28 the act pursuant to subsection (5) of section 28-311.08;

29 (IX) Violation of section 2 of this act requiring registration under
30 the act pursuant to subsection (5) of section 2 of this act;

31 (X) ~~(IX)~~ Kidnapping pursuant to section 28-313;

1 ~~(XI) (X)~~ False imprisonment pursuant to section 28-314 or 28-315;

2 ~~(XII) (XI)~~ Sexual abuse of an inmate or parolee in the first degree

3 pursuant to section 28-322.02;

4 ~~(XIII) (XII)~~ Sexual abuse of an inmate or parolee in the second

5 degree pursuant to section 28-322.03;

6 ~~(XIV) (XIII)~~ Sexual abuse of a protected individual pursuant to

7 section 28-322.04;

8 ~~(XV) (XIV)~~ Incest pursuant to section 28-703;

9 ~~(XVI) (XV)~~ Child abuse pursuant to subdivision (1)(d) or (e) of

10 section 28-707;

11 ~~(XVII) (XVI)~~ Enticement by electronic communication device pursuant

12 to section 28-833; or

13 ~~(XVIII) (XVII)~~ Attempt, solicitation, aiding or abetting, being an

14 accessory, or conspiracy to commit an offense listed in subdivisions (1)

15 (b)(i)(A)(I) through (1)(b)(i)(A)(XVII) ~~(1)(b)(i)(A)(XVI)~~ of this

16 section.

17 (B) In order for the Sex Offender Registration Act to apply to the

18 offenses listed in subdivisions (1)(b)(i)(A)(I), (II), (III), (IV), (V),

19 (VI), (VII), (X), and (XI) ~~(IX)~~, and ~~(X)~~ of this section, a court shall

20 have found that evidence of sexual penetration or sexual contact, as

21 those terms are defined in section 28-318, was present in the record,

22 which shall include consideration of the factual basis for a plea-based

23 conviction and information contained in the presentence report;

24 (ii) Has ever pled guilty to, pled nolo contendere to, or been found

25 guilty of any offense that is substantially equivalent to a registrable

26 offense under subdivision (1)(b)(i) of this section by any village, town,

27 city, state, territory, commonwealth, or other jurisdiction of the United

28 States, by the United States Government, by court-martial or other

29 military tribunal, or by a foreign jurisdiction, notwithstanding a

30 procedure comparable in effect to that described under section 29-2264 or

31 any other procedure to nullify a conviction other than by pardon; or

1 (iii) Enters the state and is required to register as a sex offender
2 under the laws of another village, town, city, state, territory,
3 commonwealth, or other jurisdiction of the United States.

4 (2) A person appealing a conviction of a registrable offense under
5 this section shall be required to comply with the act during the appeals
6 process.

7 Sec. 5. Original sections 28-367.01 and 29-4003, Reissue Revised
8 Statutes of Nebraska, and section 28-101, Revised Statutes Cumulative
9 Supplement, 2018, are repealed.